IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.21500 of 2004

Between:

M/s. Mohanlal Mahendra Kumar& Co., D.No.25-16-217, Near Mirchyard, G.T. Road, Guntur, rep by its Partner Ashok Kumar Jain S/o.Heeralal Jain, Ring Road, Guntur, Guntur Dist.

..... PETITIONER

AND

The Regional Provident Fund Commissioner-II,
Sub-Regional Office, 3rd Lane,
Krishna Nagar, Guntur.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in implementing the order issued in the proceedings No.AP/GT/39605/7A/COMP-I/G-IV/2004/269, dated 10.06.2004 by adopting coercive methods, as arbitrary, illegal and unconstitutional and consequently direct the respondent not to take any coercive steps till the disposal of the appeal filed by the petitioner firm before the Employees Provident Funds Appellate Tribunal.

Counsel for the Petitioner: MR.RAMA RAO GANTA

Counsel for the Respondent: MR.B.NARASIMHA SARMA

The Court at the admission stage made the following:

ORDER:

Aggrieved by the action of the respondent in trying to implement the order dated 10.06.2004 passed under Section 7-C of Employees Provident Fund and Miscellaneous Provisions Act 1952 (for short the Act), though, against the said order, an Appeal filed by the petitioner-firm before the Employees Provident Funds Appellate Tribunal is pending, the present writ petition is filed.

The case of the petitioner-firm is that it has been acting as a commission agent at Guntur for purchase of chillies on behalf of various customers. That for carrying on its regular business the petitioner-Firm is having five regular employees and at the instance of the respondent, it was covered under the provisions of the Act and has been paying the Provident Fund Contribution for the said employees. It is stated that the respondent issued summons on 12.2.2004 under Section 7-C of the Act directing the employer to appear before him on 11.3.2004 for the purpose of determining the dues alleged to have been evaded for the period from 5/2001 to 4/2002. It is further stated that the employer has attended before the respondent and submitted a detailed written representation stating that the petitioner firm acted only as commission agent and never employed any workmen on its own. The grievance of the petitioner-firm is that without considering the said representation, the respondent passed the impugned order dated 10.06.2004. Aggrieved by the same, the petitioner-firm filed an application before the respondent under Section 7-B (1) of the Act seeking review of the order dated 10.06.2004, which was rejected. Against the said orders, the petitioner-firm preferred an appeal No. ATA 796 (1) of 2004 before the Employees Provident Funds Appellate Tribunal along with interlocutory application for grant of stay, which could not be taken up for hearing, as there is no Presiding Officer. Hence the writ petition.

Heard the learned counsel for the petitioner and learned Standing Counsel for the respondent. Both the counsel agreed to dispose of the writ petition at the stage of admission.

Since the appeal preferred by the petitioner-firm along with interlocutory application, against the orders of the respondent, is said to be pending before the Employees Provident Funds Appellate Tribunal, without going into merits of the matter, I deem it appropriate to dispose of the writ petition with the following direction.

The Appellate Authority is at liberty to take up the appeal No. ATA 796 (1) of 2004 preferred by the petitioner against the order, impugned herein, as early as possible and pass appropriate orders in the interlocutory application filed along with the appeal in accordance with law. There shall be interim stay of impugned order dated 10.06.2004 till the disposal of the interlocutory application filed by the petitioner in the said appeal.

With the above direction, the writ petition is disposed of at the stage of admission. No costs.

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(N.V. RAMANA, J)

Date: 06.12.2004

Nsr/Ksr

To

1. The Regional Provident Fund Commissioner-II,
   Sub-Regional Office, 3rd Lane,
   Krishna Nagar, Guntur.

2. Two CD copies.